The second defendants were then in a parlous state in April 1987. However, the third defendants continued to give credit to the second defendants and on 14 April 1987 obtained a cheque for $50,000 from the second defendants as security pending the provision of other securities which was done on 27 April 1987 by the deposit of the 6,000 SPH shares. The amount outstanding as at 23 April 1987 was $106,726.39 and as at 6 May 1987 was $177,569.72.

There is then no doubt that consideration was provided by the third defendants for the 6,000 SPH shares. However, the same cannot be said for the 2,000 SPH shares on 6 May 1987. No further credit was provided as the second defendants were put into receivership on 8 May 1987. On these facts, the third defendants can only succeed, if at all, in respect of the 6,000 SPH shares.

I come now to the question of actual notice or constructive notice. Counsel for the receivers and managers has argued that the fact that the third defendants had been able to obtain the Citibank guarantee and its encashment must have alerted them to a number of things: firstly, the banking relationship between Citibank and the second defendants had provided Citibank with security for the guarantee; secondly, the financial condition of the second defendants. The third defendants could be said to have turned a blind eye to something they could have easily found out. It seems to me that there is a point in this submission: there would be a complete lack of commercial realism in the conduct of the third defendants if they did not think or consider that Citibank would have obtained security for the guarantee, which was for a substantial amount, it gave for the account of the second defendants. The cross-examination of the third defendants might have yielded additional evidence on how much the third defendants had known when they asked for or were offered the Citibank guarantee before they agreed to give credit to the second defendants. But I have not heard oral evidence. Therefore, it would not be proper or correct for me to make any finding on whether there was constructive notice.

As regards the burden of proof on the absence of notice, I find no assertion in any of the affidavits filed in support of the third defendants' case that the third defendants had made no search in the Registry of Companies or otherwise was not aware of the debenture and the registered particulars. There is total silence on this point.

Accordingly, I am compelled to hold that the third defendants have failed to discharge the burden of proving that they had no notice of the debenture and the particulars registered with the Registrar of Companies.

There will accordingly be an order that the plaintiffs deliver the 8,000 SPH shares to the receivers and managers for disposal under the terms of the debenture. The costs of the plaintiffs and the receivers and managers in these proceedings will be borne by the first defendant and the third defendants in equal shares.

Order accordingly.

Solicitors: *Tan Rajah & Cheah*; *Abraham Low & Partners*; *Ramdas & Wong*; *Godwin & Co.*

Reported by *Wong Kim Fatt*

Re Abdul Rahim Rajudin

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 973 OF 1987
WEE CHONG JIN CJ, SINNATHURAY AND THEAN JJ
2 NOVEMBER 1988

Legal Profession – Disciplinary proceedings – Complaint of demand by advocate and solicitor for unconscionable commissions for putting through land transactions – Complaint that advocate and solicitor rendered excessive bill – Grossly improper conduct – Legal Profession Act (Cap 161, 1985 Ed), s 80(2) – Solicitors' Remuneration Order 1974, Schedule 1, r 14 & Schedule VI

Words and Phrases – 'Grossly improper conduct – Legal Profession Act (Cap 161, 1985 Ed), s 80(2)(b)

Following an inquiry by the Disciplinary Committee ('the committee), the Law Society of Singapore brought the instant application calling upon the respondent to show cause why he should not be dealt with under the provisions of s 80(2) of the Legal Profession Act (Cap 161, 1985 Ed) ('the Act'). There were three complaints against the respondent, namely: (i) that the respondent took advantage of his client, one Peter Chaw, in demanding unconscionable commissions for putting through various land transactions; (ii) that he committed a breach of r 14 of Schedule 1 to the Solicitors' Remuneration Order 1974 (which rule provided for a negotiating fee) in that by a note ('the note') having solicited for and having agreed to accept a commission of $23,844.75 computed at the rate of 25 cents per sq ft of the property concerned as remuneration for services rendered in securing a buyer, he had subsequently entered into an agreement with Peter Chaw ('the commission agreement') to take a further sum of $119,223.75 computed at the rate of $1.25 per sq ft of the property as further remuneration for services rendered in securing a buyer; and (iii) that he rendered an excessive bill of costs for $150,000 ('the bill'). By reason of these matters, it was alleged that the respondent: (i) had been guilty of grossly improper conduct in the discharge of his professional duty within the meaning of s 80(2)(b) of the Act; and (ii) that he had contravened s 80(2)(j) of the Act. It was in evidence and was accepted by the committee that the note which provided for payment of commission at the rate of 25 cents per sq ft had merged into the commission agreement and that subsequently by agreement between the respondent and Peter Chaw's new solicitor the commission of $119,223.75 was treated as including the respondent's costs from 4 October 1979 to 25 June 1980. The respondent maintained that of that sum his costs and disbursements were approximately $50,000 and the balance sum of $69,000 represented the commission or 'finder's fees' for securing a purchaser.

The committee accepted the evidence of Peter Chaw that he had no choice but to sign the commission agreement when requested by the respondent as he urgently needed the respondent's assistance. American Express, on whose petition Peter Chaw was adjudicated bankrupt in July 1982, was pressing for payment at that time. On the facts before the committee it was not established that the respondent had arranged the sale of Peter Chaw's property 'and the price and terms and conditions of the sale thereof ' within the meaning of r 14.

On the bill, it was not in dispute that it included the sum of $119,223.75. The balance sum of approximately $30,000 was said to be for services rendered by the respondent between June 1980 and March 1981 in assisting Peter Chaw on matters of fact in legal proceedings arising out of the sale and purchase of the property. The services consisted of attendances at the office of Peter Chaw's new solicitor, swearing an affidavit in support of Peter Chaw's case, and attending court to give assistance on facts of which the respondent had personal knowledge. The respondent estimated that the amount of time spent on such services ranged from 50 to 100 hours. The committee found that the respondent was not justified in charging the fee of $30,000 and further held that, whatever costs the respondent might be properly entitled to, the two elements of the bill, namely, the 'finder's fees' and the charge for work done after 25 June 1980 were 'an unacceptable overcharge and unconscionable'. The respondent admitted in evidence that the commission agreement was cancelled by the bill and the committee found that he never intended to charge commission cumulatively under the note, the commission agreement and the bill.

In relation to the first complaint the first issue that had to be resolved was whether the agreements for commission were made in the respondent's professional capacity as a solicitor or in his personal capacity as an individual. It was submitted for the respondent that there was no element of professional skill involved in looking for a purchaser of the property and that the agreement was outside the ambit of the professional services of a solicitor and that unless accompanied by fraud, undue advantage or misrepresentation, such an agreement which was freely made with a client who was fully aware of the facts was neither unprofessional nor improper. The next issue was whether the respondent took advantage of Peter Chaw when he made the two agreements as to the commission.

The committee also expressed the view that the overcharge of the commission under the note, the commission agreement, and the bill, and the excessive amount of costs in the bill, ie in the sum of $30,000, would amount to a contravention of the provisions of Schedule VI to the Order within the meaning of s 80(2)(j) of the Act. The objection taken on behalf of the respondent to that finding was that there was no complaint or charge against the respondent that he had contravened the provisions of Schedule VI to the Order.

Held, ordering that the respondent be suspended from practice for two months:

(1) In regard to the first complaint, the proposition that introducing a buyer for the property did not involve any professional skill or service does not ipso facto divest the respondent of his character as a solicitor since on the facts here the non-professional work was an integral and inseparable part of his entire retainer as Peter Chaw's solicitor. In negotiating for his commissions or finder's fees the respondent's character as a solicitor was so inextricably part of the transaction that his own legal costs were merged with the commissions in the agreements for commission. The respondent's involvement at all stages, including the times when the agreements for commission were made, was as a solicitor. The basis upon which the respondent was employed by Peter Chaw to find a buyer must have been the relationship of solicitor and client then existing between them. Accordingly, the court had no difficulty in coming to the conclusion that the agreements for commission were made in the respondent's professional capacity and in the discharge of his professional duties.

(2) On the evidence, Peter Chaw had of his own free will agreed to pay the respondent the commission under the note, and such commission could not in the circumstances be considered to be unconscionable; nor could it be said to be a gross overcharge.

(3) The commission agreed to be paid to the respondent under the commission agreement was grossly excessive and unconscionable. The irresistible inference from the facts was that Peter Chaw was never free (in agreeing to and signing the commission agreement) from the influence of the respondent acting as his solicitor. The respondent abused the trust and confidence reposed in him by Peter Chaw by obtaining for himself a hefty commission. A reasonable remuneration for the introduction of a buyer on the facts here would be the amount payable to the respondent under the note. The commission payable under the note was slightly more than 1% of the purchase price. This took into account the part played by the respondent and the prevailing market rate and made an allowance for the profits which Peter Chaw expected to reap from the sale. The commission agreement was unfairly made in that the respondent took advantage of Peter Chaw and the terms of the agreement were unreasonable in that they were grossly excessive and indicated in a telling manner the respondent's abuse of his fiduciary position. Such conduct on the part of the respondent was grossly improper in the discharge of his professional duty.

(4) In regard to the second complaint, the respondent did not purport to charge his commission or fee under r 14. The commission he asked for and agreed to by Peter Chaw was for finding a buyer, both under the note and the commission agreement. There was no question therefore of the respondent having committed a breach of r 14.

(5) In regard to the third complaint, the court accepted the findings of the Disciplinary Committee that the bill was an excessive bill in respect of the work done. Solicitors rendering exorbitant or excessive bills, ie bills for sums totally out of all proportion to work done by them, lay themselves open to disciplinary action. Although the court did not think that in the circumstances the respondent was justified in rendering the bill for $150,000, the court was of the opinion that it was improper conduct which fell short of 'grossly improper conduct' in the diischarge of his professional duty within the meaning of s 80(2)(b) of the Act.

(6) The committee had no power to inquire into and investigate any breach of the provisions of Schedule VI to the Order in the instant case and the committee's finding in that regard could not be sustained.

(7) Though the commission agreement was perfected the respondent had not sought to enforce it. Further, no payment of any sum, whether under the note, the commission agreement or the bill, had been made to the respondent for the services which he had rendered to Peter Chaw. Nevertheless, the fact remained that he took advantage of Peter Chaw as a client and abused his position as a solicitor, and that was a serious matter.

Case referred to

1 *Re an Advocate and Solicitor* [1978] 2 MLJ 7 (folld)

Legislation referred to
Legal Profession Act (Cap 161, 1985 Ed) ss 80(2)(b), (j)
Solicitors' Remuneration Order 1974 Schedule 1, r 14, Schedule VI

Burke-Gaffney QC (*B Mohan Singh* with him) for the respondent.

Bernard Doray for the Law Society of Singapore.

Cur Adv Vult

Thean J (delivering the judgment of the court): Abdul Rahim Rajudin (the respondent) is an advocate and solicitor of the Supreme Court; he was admitted to the Bar on 11 May 1977. At the material time he carried on and presently carries on his legal practice in sole proprietorship. From as early as October 1979 he acted for one Peter Chaw Chuan Choon ('Peter Chaw') in the purchase of a piece of land situated at Coronation Road marked on a government resurvey map as Lot 87-9 of Mukim II and comprising an area of 95,379 sq ft ('the property'). Negotiations for the purchase of the property between Peter Chaw and the then owners had commenced much earlier than October 1979 – sometime in the middle of 1979 or thereabout. The agreement for the purchase of the property was executed on or about 4 February 1980, under which Peter Chaw agreed to purchase the property at the price of $667,653 (calculated at $7 per sq ft) without vacant possession, and completion of the purchase was to take place on 21 June 1980. After the purchase of the property, arrangements were made for the resale of the property. According to the respondent, after several meetings with prospective buyers which came to nought, Peter Chaw asked him to find a purchaser. The respondent through his friend, Roland Mah, introduced one Philip Yap Pui Long ('Philip Yap') to Peter Chaw. On 4 March 1980, Philip Yap, Roland Mah, Peter Chaw and the respondent met at the latter's office and after negotiations, the price was agreed at $23.50 per sq ft. A sale and purchase agreement was prepared and signed by Peter Chaw and Philip Yap the next day. By this agreement, Peter Chaw agreed to sell the property to Philip Yap at the price of $2,241,406.50 (calculated at $23.50 per sq ft) with vacant possession and completion for the sale and purchase was fixed for 30 September 1980. The respondent acted for both Peter Chaw and Philip Yap in this transaction.

Prior to the execution of the sale agreement with Philip Yap, negotiations also took place between Roland Mah and Peter Chaw as to the commission payable to Roland Mah by Peter Chaw. In consequence, a document was signed by Peter Chaw and addressed to the respondent under which Peter Chaw agreed to pay to Roland Mah a commission at the rate of 50 cents per sq ft of the property 'for securing a buyer' and authorized the respondent to release the commission to Roland Mah from the proceeds of sale of the property on completion. This document was first agreed upon on 29 February 1980 but was subsequently amended and signed on 4 March 1980. We shall refer to this document as 'the note'. The commission originally asked for was $1 per sq ft but was reduced to 50 cents per sq ft. Out of this commission, Roland Mah agreed in writing by an endorsement on the note to pay to the respondent a share at the rate of 25 cents per sq ft.

But prior to the sale and purchase agreement with Philip Yap, Peter Chaw had on 26 December 1979 entered into a sale and purchase agreement dated 26 December 1979 to sell the property to one Madam Lee Suat Hong represented by M/s Lee Bon Leong & Co. The price for the property subject to the existing tenancies was $1,335,306 (at $14 per sq ft). The respondent did not know of this agreement until early April 1980. Subsequently, the respondent resolved the matter with M/s Lee Bon Leong & Co and that agreement was rescinded upon terms which, inter alia, included a payment of $273,036.63 to Madam Lee Suat Hong. This payment was advanced by Philip Yap and deducted from the purchase price under the sale agreement made between him and Peter Chaw.

On or about 25 June 1980, an agreement in writing was made between Peter Chaw and the respondent, whereby Peter Chaw agreed to pay to the respondent the sum of $119,223.75 (calculated at the rate of $1.25 per sq ft) for the services rendered by the respondent in 'securing a buyer for (Peter Chaw) to purchase the property at $23.50 per sq ft'. We shall refer to this agreement as 'the commission agreement'. By the commission agreement, Peter Chaw also agreed that the sum of $119,223.75 would be paid on 13 September 1980 or on a later date fixed for completion of the sale of the property to Philip Yap. At or about that time, disputes between Peter Chaw and Philip Yap as to the clearance of squatters on the property and the payments under the sale agreement had erupted. In consequence, the respondent could not act for either party; they both discharged the respondent and engaged separate solicitors. Shortly thereafter, by exchange of correspondence between Kirpal Singh & Co, who were then the solicitors for Peter Chaw, and the respondent it was agreed that the sum of $119,223.75 would include the latter's costs and all disbursements incurred from 4 October 1979 to 25 June 1980.

On 23 August 1980, a vendor and purchaser summons in Originating Summons No 418 of 1980 was taken out by Philip Yap against Peter Chaw concerning the sale agreement made between them. Thereafter, the respondent assisted Kirpal Singh & Co in those proceedings on matters of fact, attending at their office and swearing an affidavit in support of Peter Chaw's case; he also attended court to give assistance on the facts of which he had personal knowledge. On 10 April 1981, the respondent sent to Peter Chaw a bill of costs dated 3 April 1981

for $150,000 for professional charges in connection with the property. We shall refer to this bill of costs as 'the bill'. No payment, however, was made by Peter Chaw. On 26 April 1982, the respondent instituted legal proceedings against Peter Chaw in Suit No 1675 of 1982 claiming for the sum of $150,000 as professional charges for work done relating to the property. In that suit the respondent also took out an application for summary judgment, which, however, was adjourned sine die. On 5 August 1982, Peter Chaw in turn instituted legal proceedings against the respondent in Originating Summons No 448 of 1982 seeking an order for taxation of the bill but did not pursue the matter further.

On 23 March 1982, Peter Chaw made a complaint to the Law Society of Singapore ('Law Society') against the respondent. The complaint was referred to the Inquiry Committee and upon the report of the committee, the Council of the Law Society determined that there should be a formal investigation by a Disciplinary Committee of the following complaints, namely:

(1) that the respondent took advantage of Peter Chaw by demanding unconscionable commissions for putting through various land deals on top of legal costs (thereby breaching para 14 of the Solicitors' Remuneration Order 1974);
(2) that he rendered an excessive bill of $150,000.

In due course a Disciplinary Committee was appointed. Before the Disciplinary Committee ('the committee'), the complaints against the respondent as set out in the amended statement of case were as follows:

(a) On or about 4 March 1980 he solicited for and agreed to accept a commission of $23,844.75 computed at the rate of 25 cents per sq ft of the property as remuneration for services in securing a buyer and subsequently on or about 29 June 1980 he entered into an agreement with Peter Chaw to take a further sum of $119,223.75 computed at the rate of $1.25 per sq ft of the property as further remuneration for services rendered in securing a buyer, and in the premises he acted in contravention of r 14 of Schedule I to the Solicitors' Remuneration Order 1974 ('r 14').
(b) On or about 10 April 1981 he rendered a bill to Peter Chaw for $150,000 without justification.

By reason of these matters it was alleged that the respondent (i) had been guilty of grossly improper conduct in the discharge of his professional duty within the meaning of s 84(2)(b), now s 80(2)(b), of the Legal Profession Act ('the Act') and (ii) had contravened s 84(2)(j), now s 80(2)(j), of the Act.

The committee in their report dated 26 April 1984 made findings on three critical documents: (i) the note; (ii) the commission agreement; and (iii) the bill.

On the note, the committee found, by inference, that the respondent asked for and agreed through his friend, Roland Mah, to take commission amounting to $23,844.75 computed on the basis of 25 cents per sq ft of the property.

On the commission agreement the committee found that the stand taken by the respondent was rather ambiguous: on the one hand he said that the amount stated therein was 'finder's fees' to which he was entitled for securing a buyer in his personal capacity and not professional capacity, and on the other he said it was initially a gift from Peter Chaw. The committee appeared to have rejected his evidence and accepted the evidence of Peter Chaw. Peter Chaw said that the respondent had on 4 March 1980 asked him to pay the commission of $1.25 per sq ft 'for all the work to be done including introduction of a buyer', and at the time of the signing of the commission agreement he had no choice but to sign it when requested by the respondent as he urgently needed the respondent's assistance towards the end of June 1980. The committee found that there was evidence that Peter Chaw had problems then and the question of his need to change solicitor was arising at about that time.

It was in evidence, and was accepted by the committee, that the initial agreement, the note, for payment of 25 cents per sq ft had merged into the commission agreement, and that subsequently by agreement between the respondent and Peter Chaw's new solicitor, Kirpal Singh, the commission of $119,223.75 was treated as including the respondent's costs and all the disbursements incurred from 4 October 1979 to 25 June 1980. The respondent maintained that his costs and disbursements were approximately $50,000 and the balance sum of $69,000 represented the commission or 'finder's fees' for securing a purchaser. The committee found that the commission of $119,223.75 under the agreement was a gross overcharge, and further, even if part of it was converted to fees and disbursements, the balance, namely, some $69,000 was an 'overcharge and unconscionable'.

On the bill for $150,000 it was not in dispute that it included the amount of $119,223.70. The balance sum of approximately $30,000 was said to be for services rendered by the respondent between June 1980 and March 1981 in assisting Peter Chaw on matters of fact in the proceedings in Originating Summons No 418 of 1980 brought by Philip Yap against Peter Chaw. The services consisted of attendances at the office of M/s Kirpal Singh & Co, swearing an affidavit in support of Peter Chaw's case and attending court to give assistance on facts of which the respondent had personal knowledge. The respondent estimated that the amount of time spent on such services ranged from 50 to 100 hours. The committee found that the respondent was not justified in charg-

ing the fee of $30,000, and further held that, whatever costs the respondent might be properly entitled to, the two elements of the bill, namely, the 'finder's fees' and the charge for work done after 25 June 1980, were 'an unacceptable overcharge and unconscionable'.

The committee found that the respondent never intended to charge commissions cumulatively under the note, the commission agreement and the bill and that his only claim for costs, disbursements and commission was under the bill. The respondent admitted in evidence that the commission agreement was cancelled by the bill and the correspondence between Kirpal Singh and him, which correspondence constituted a new agreement as to costs and commission.

With respect to r 14, the committee held that the respondent could not charge his remuneration thereunder for the services rendered on the ground that that Rule applies only to a case where an advocate and solicitor arranges the sale or purchase of property and negotiates the price, terms and conditions and no commission is paid by the client to a broker or an estate or other agent. In the instant case, the respondent only found a purchaser and the commission or 'finder's fees' was only for securing a purchaser. The committee further held that if the respondent based his claim that the note and the commission agreement came under s 109, now s 106, of the Legal Profession Act, the charges were excessive and unconscionable. In this connection, the committee adopted the scale of charges prescribed in the provision of r 14 as a proper guide 'to what is acceptable, ethical and is not unconscionable' and also for measuring a solicitor's negotiating fee and not the 1% to 3% that may be charged by brokers. In the alternative, said the committee, the respondent could have charged under Schedule VI of the Solicitors' Remuneration Order 1974 for work for which no provision is made by means of a scale or a fixed sum, and even on that basis, the committee held that the amount charged by the respondent was grossly excessive.

In conclusion, the committee found that the charges against the respondent had been proved beyond a reasonable doubt to the following extent, namely:

(i) that the commission or 'finder's fees' in the note and the commission agreement and the subsequent conversion of the commission to part costs and disbursements and part commission were 'all unconscionable and overcharges warranting disciplinary action';

(ii) that the bill was an excessive bill in respect of the commission of $69,000 admitted by the respondent to be included therein, and

(iii) that the bill was excessive in respect of the sum of $30,000 for the services rendered by the respondent after June 1980.

The committee was of the view that that would amount to grossly improper conduct on the part of the respondent in the discharge of his professional duty within the meaning of s 80(2)(b) of the Act and to a contravention of the provisions of Schedule VI to the Solicitors' Remuneration Order 1974 within the meaning of s 80(2)(j) of the Act and determined that cause of sufficient gravity for disciplinary action existed under these sections.

Arising from such determination this application is now brought by the Law Society calling upon the respondent to show cause why he should not be dealt with under the provisions of s 80(2) of the Act. The first complaint or charge as stated in the Law Society's letter of 13 October 1983 is that the respondent took advantage of Peter Chaw by demanding unconscionable commissions for putting through various land deals on top of legal costs (thereby breaching r 14). This complaint was not clearly reflected in the amended statement of case of the Law Society; paras 6, 7 and 8 thereof in substance merely alleged that the respondent first solicited and agreed to accept a commission of $23,844.75 from Peter Chaw for services rendered in securing a buyer for the property and subsequently entered into an agreement with Peter Chaw whereby he agreed to accept a further sum of $119,223.75 as remuneration for the same services rendered, and that in the premises the respondent had contravened r 14. It seems to us that there are three complaints against the respondent: (i) that the respondent took advantage of Peter Chaw in demanding unconscionable commissions for putting through various land transactions, (ii) that he committed a breach of r 14, and (iii) that he rendered an excessive bill of $150,000.

In relation to the first complaint the first issue that has to be resolved is whether the agreements for commission were made in the respondent's professional capacity as a solicitor or in his personal capacity as an individual. Mr Burke-Gaffney for the respondent submitted that there was no element of professional skill involved in looking for a purchaser of the property and that the agreement was outside the ambit of the professional services of a solicitor and that unless accompanied by fraud, undue advantage or misrepresentation, such an agreement which was freely made with a client who was fully aware of the facts is neither unprofessional nor improper. In connection with this point it is necessary to examine all the circumstances to see whether at the times when the respondent entered into these commission agreements with Peter Chaw, he acted in pursuance of the relation of solicitor and client then existing between him and Peter Chaw. This was not a case where the respondent was engaged for the sole purpose of finding a buyer for the property. He was intimately involved at all material times; he was acting as Peter Chaw's solicitor in the purchase of the property (which involved obtaining leave of court) and its resale thereafter at a substantial profit.

His own evidence was that he was directly involved in negotiating with the squatters; he had instructions to prepare a squatter removal agreement and he even accompanied Peter Chaw to see four prospective purchasers. 'Practically everyday, (Peter Chaw) was in my (ie the respondent's) office. From middle of February 1980, I was practically working for the complainant,' said the respondent. The respondent even gave a personal undertaking to resolve an earlier sale to one Mdm Lee Suat Hong, for which he expected to be remunerated. In all of these tasks, the respondent was manifestly acting as Peter Chaw's solicitor. It is to be noted that the note was signed on 5 March 1980 and the commission agreement though signed on 25 June 1980 was orally agreed to earlier, at which time completion for the purchase of the property was still pending. At all material times leading to the formation of the commission agreements, the respondent was acting as Peter Chaw's solicitor.

The proposition that introducing a buyer for the property did not involve any professional skill or service, does not ipso facto divest the respondent of his character as a solicitor; since on the facts here, the non-professional work was an integral and inseparable part of his entire retainer as Peter Chaw's solicitor. The moment the purchaser, Philip Yap, was found, and the price agreed, the respondent's professional services were engaged. He immediately prepared the sale and purchase agreement between Peter Chaw and Philip Yap and it was signed by them. Even while his retainer as Chaw's (the vendor's) solicitor was subsisting, the respondent was also retained as Yap's (the purchaser's) solicitor.

In negotiating for his commissions or finder's fees, the respondent's character as a solicitor was so inextricably part of the transaction that his own legal costs were merged with the commissions in the commission agreement. The respondent's involvement at all stages, including the times when the agreements for commissions were made, was as a solicitor. The basis upon which the respondent was employed by Peter Chaw to find a buyer must have been the relationship of solicitor and client then existing between them. In our view, it is for that reason that the respondent was able to secure a finder's fee which was substantially more than Roland Mah's commission as a broker.

Accordingly, we have no difficulty in coming to the conclusion that the commission agreements were made in the respondent's professional capacity and in the discharge of his professional duties.

The next issue in relation to the first complaint is whether the respondent took advantage of Peter Chaw when he made the two agreements as to the commission. Again, it is necessary to examine the circumstances in which these agreements were made. We deal first with the note. Peter Chaw bought the property in February 1980 for $667,653 (calculated at $7 per sq ft) without vacant possession. He then asked the respondent to find a buyer which the respondent did through his friend Roland Mah, and to this buyer Peter Chaw re-sold the property in March 1980 for $2,241,406.50 (calculated at $23.50 per sq ft) with vacant possession with completion to take place on 30 September 1980 or later on vacant possession being delivered. On or before the execution of the sale agreement with Philip Yap or at about that time, Peter Chaw agreed to pay a commission to Roland Mah and the respondent, each at the rate of 25 cents per sq ft of the property. The rate of commission payable to each is slightly in excess of 1% of the price of the property payable by Philip Yap. There was no evidence of any pressure being exerted on Peter Chaw in agreeing to this commission. Neither in his lengthy complaint to the Law Society nor in his evidence before the committee did Peter Chaw ever say that the respondent, either alone or together with Roland Mah, pressured or in any unfair way induced him to agree to pay such commission. It seems to us that Peter Chaw freely negotiated with Roland Mah and presumably the respondent on this commission; initially the commission asked for was $1 per sq ft but it was reduced to 50 cents per sq ft. Peter Chaw must have been quite happy to pay this amount of commission to Roland Mah and the respondent. Through them he would be making or he expected to make a large profit out of the re-sale of the property; certainly his expectation of such profit at that time was very real. We find that Peter Chaw had on his own free will agreed to pay to the respondent the commission under the note, and such commission cannot in the circumstances be considered to be unconscionable; nor, in our view, can it be said to be a gross overcharge.

We now turn to the commission agreement. It was signed on 25 June 1980, shortly before the respondent ceased to act for Peter Chaw. There was evidence, which the committee accepted, that the respondent asked for this commission, ie $1.25 per sq ft, earlier, namely, on 4 March 1980 or thereabout. The committee also accepted the evidence of Peter Chaw that he had no choice but to sign the commission agreement when requested by the respondent as he urgently needed the respondent's assistance towards the end of June 1980. The relevant portion of his evidence is at p 45 of the record of proceedings:

Q: Did Mr Philip Yap make full payment on or before 21 June 1980?

A: Mr Philip Yap paid me slightly over about $600,000 short of $66,765.30.

Q: Refer to AB15. Is not the amount of $66,765.30 due and owing by Mr Philip Yap?

A: *When I asked Mr Rajudin to write this letter (AB15) he imposed two conditions before he would write the letter*; (a) *he requested $1.25 per sq ft to be included in an agreement (AB13-14) dated 25 June 1980*, (b) *he wanted an indenture to be executed in favour of Mr Philip Yap.*

At p 46 of the record of proceedings:

A: *When I asked him to write a letter (AB15) he wanted me to sign an agreement to pay him $1.25 per sq ft and to date it 25 June 1980.*

...

Q: You were in fact unable to complete the sale with your uncles on 21 June 1980?

A: No. The agreement with my uncles was completed by that date. It was my agreement with Mr Philip Yap that he failed to complete. *I needed the money urgently because I needed to pay American Express. So I wanted a letter written (AB15).*

Q: Did the money come after the letter of demand was sent?

A: No.

Q: Mr Rajudin was also acting for Mr Philip Yap up to this point?

A: Yes.

(emphasis added)

The committee was justified in accepting the evidence of Peter Chaw. The evidence shows that Peter Chaw was at the material time in need of help. American Express, on whose petition Peter Chaw was adjudicated bankrupt in July 1982, was pressing for payment. Peter Chaw turned naturally to the respondent in whom a high degree of trust and confidence were reposed. He needed the respondent to continue acting for him. At that juncture it did not appear that Peter Chaw had much of a free choice in signing the commission agreement. The evidence which we have quoted verbatim demonstrates that Peter Chaw was at that time under some pressure in signing the commission agreement.

In reaching their finding that the commission agreed to be paid to the respondent under the commission agreement was grossly excessive and unconscionable, the committee said this:

> The respondent stood in a fiduciary relationship with his client, Chaw, but did not at any time advise him on the fees chargeable in whatever shape or form much less direct him to seek independent advice before signing the commission agreement or agreeing to any other provision for commission. In doing so, the respondent abused his position as a solicitor and the bargain struck with Chaw was an unconscionable one.

We agree with the committee. In our opinion, the irresistible inference from the facts was that Peter Chaw was never free (in agreeing to and signing the commission agreement) from the influence of the respondent acting as his solicitor. The respondent, we find, abused this trust and confidence by obtaining for himself a hefty commission. In this connection we find the following passage from *Cordery on Solicitors*, 7th Ed, at p 9, relevant:

> The relationship existing between a solicitor and his client is recognized in equity as a fiduciary one imposing on the solicitor special obligations. In his dealings with his client the solicitor must exercise the utmost good faith, and in any financial transaction with his client (save as to costs for work done) there will be a presumption that such transaction should not be upheld unless the solicitor can establish that it was effected by the free exercise of the client's will and without any influence on the part of the solicitor.

We turn now to consider if the amount of the commission was excessive. In our opinion, a reasonable remuneration for the introduction of a buyer on the facts here would be the amount payable to the respondent under the note. The commission is slightly more than 1% of the purchase price. This takes into account the part played by the respondent, the prevailing market rate and makes an allowance for the profits which Peter Chaw expected to reap from the sale.

Construing the commission agreement strictly, the respondent attempted to secure a sum of $119,223.75 for commissions (about 5% of the purchase price) which amount works out to be five times what was payable to Roland Mah under the note. Even after taking into account the conversion of a part thereof to legal costs and disbursements, the amount of $69,000 is still three times Roland Mah's commission. The facts show that the buyer was secured through the efforts of Roland Mah and the only part played by the respondent was in introducing his friend Roland Mah to Peter Chaw. Yet, the respondent sought to obtain for himself a commission far in excess of that payable to Roland Mah. In our judgment, the amount of the commission is grossly excessive and the comparisons afford the clearest indication that the respondent had abused the solicitor-and-client relationship to promote his own interests. We find the commission agreement (which includes the amount in the note) was unfairly made in that the respondent took advantage of Peter Chaw and that the terms of the agreement are unreasonable in that they are grossly excessive and indicate in a telling manner the respondent's abuse of his fiduciary position. Such conduct on the part of the respondent was grossly improper in the discharge of his professional duty.

We now turn to the second complaint: that the respondent had contravened r 14. The provision of this rule is as follows:

> In addition, where circumstances allow a solicitor shall be entitled to charge a negotiating fee. The scale for negotiating shall be in accordance with the scale prescribed by Schedule I and apply to cases where the solicitor for a vendor or purchaser arranges the sale or purchase and the price and terms and conditions thereof and no commission is paid by the client to an auctioneer or estate or other agent. A mortgagee's solicitor shall be entitled to a negotiating fee where he arranges and obtains a loan from a person for whom he acts. The solicitor's negotiating fee shall be full scale based on the amount of the consideration.

On the facts before the committee it was not established that the respondent had arranged the sale of Peter Chaw's property 'and the price and terms and conditions of the sale thereof' to Philip Yap. The evidence was, and this

was not disputed, that Peter Chaw asked the respondent to find a buyer for the property which the respondent did through his friend, Roland Mah. There was no evidence that the respondent participated in the negotiations between Peter Chaw and Philip Yap. The respondent did not purport to charge his commission or fee under r 14. The commission he asked for and agreed to by Peter Chaw was for finding a buyer – both under the note and the commission agreement. There is no question, therefore, of the respondent having committed a breach of r 14. Rule 14 has no application to the commission agreed to be paid by Peter Chaw to the respondent under either the note or the commission agreement.

We now turn to the last complaint against the respondent: that he rendered the bill for $150,000 without justification. The amount under the commission agreement was embodied in the bill and the committee accepted the respondent's evidence that his only claim was for costs, disbursements and commission under the bill. The committee made two findings in respect of the bill: (i) the bill was an excessive bill in respect of the commission of approximately $69,000 admitted by the respondent to be included therein, and (ii) the bill was an excessive bill in respect of the sum of $30,000 for work done after June 1980. On the first finding we agree with the committee; as we have said, the amount was grossly excessive. On the second finding we also agree that it was an excessive bill in respect of $30,000 as costs for the work done by the respondent. In no way can this amount be justified. It bore no relation whatsoever to the work the respondent alleged that he had done bearing in mind that at the material time Peter Chaw had retained M/s Kirpal Singh & Co to act for him and the respondent merely gave assistance on matters of fact of which he had personal knowledge. We agree with the committee's view that the bill was an extraordinary document and the amount charged was a gross overcharge and was totally unjustified. Solicitors rendering exorbitant or excessive bills, ie bills for sums totally out of all proportion to work done by them, lay themselves open to disciplinary action. But the question is: did the sending of this bill by the respondent to Peter Chaw amount to grossly improper conduct in the discharge of his professional duty? The bill was sent on 3 April 1981 after the respondent had ceased to be Peter Chaw's solicitor. Peter Chaw was then advised by Mr Kirpal Singh. No pressure was brought to bear or could be said to be brought to bear on Peter Chaw to pay the bill. Peter Chaw refused to pay the bill and, in our view, rightly. The respondent then instituted Suit No 1675 of 1982 against Peter Chaw claiming for the amount under the bill; the latter responded by taking out Originating Summons No 448 of 1982 seeking an order for taxation of the bill. Neither of the matters had proceeded further because Peter Chaw was subsequently adjudicated a bankrupt. Although we do not think that in the circumstances the respondent was justified in rendering the bill for $150,000, we are of the opinion that it was improper conduct which fell short of 'grossly improper conduct' in the discharge of his professional duty within the meaning of s 80(2)(b) of the Act.

The committee also expressed the view that the overcharge of the commision under the note, the commission agreement and the bill and the excessive amount of costs in the bill, ie $30,000, would amount to a contravention of the provision of Schedule VI to the Solicitors' Remuneration Order 1974 within the meaning of s 80(2)(j) of the Act. The basis for holding this view was not clearly stated, but seems to be this. The committee found that the exorbitant amount of commission and the excessive costs could not be charged under r 14 on the ground that the conditions laid down by that Rule had not been fulfilled, but held that the scale prescribed for the charges under r 14 would be a good guide and on that basis the amount charged was excessive and unconscionable. In the alternative, said the committee, the respondent could have charged under Schedule VI and on that basis the amount charged 'for arranging the sale or negotiating it by the respondent [was] grossly excessive.' Schedule VI regulates the remuneration of solicitors for non-contentious work for which no provision is made by means of scale or fixed sum and provides that in such cases the remuneration shall be such sum as is fair and reasonable, having regard to all the circumstances of the case and in particular the seven circumstances as set out in the Schedule.

The objection to this finding is that there was no complaint or charge against the respondent that he had contravened the provisions of Schedule VI to the Solicitors' Remuneration Order 1974. The committee had no power to inquire into and investigate any breach of these provisions: see *Re an Advocate and Solicitor*.[1] There, in delivering the judgment of the court, Wee Chong Jin CJ said, at p 11:

> With regard to the point taken by Mr Smith on the council's said letter and s 88 of the Act it appears to us that by virtue of this section it is the Council of the Law Society that formulates charges against an advocate and solicitor and that under s 93(1) of the Act a Disciplinary Committee appointed by the Chief Justice can only investigate matters referred to it by the council and cannot decide of its own motion to inquire into and investigate matters not specifically referred to it by the council.

Accordingly, this finding cannot be sustained.

We turn now to the penalty that should be meted out to the respondent in relation to the first complaint in respect of the commission agreement. Though the commission agreement was perfected the respondent has not sought to enforce it; in fact he said, and it was accepted by the committee, that his claim for commission, costs

and disbursements is under the bill and the commission agreement 'was cancelled'. Further, no payment of any sum, whether under the note, the commission agreement or the bill, has been made to the respondent for the services which he had rendered to Peter Chaw. Nonetheless, the fact remains that he took advantage of Peter Chaw as a client and abused his position as a solicitor, and that is a serious matter. In all the circumstances, we order that the respondent be suspended from practice for a period of two months and that he should pay the costs here and before the committee.

Order accordingly.

Solicitors: *B Mohan Singh & Co*; *Bernard Doray Rada & Partners*.

Reported by *PS Ranjan*

Mohd Sainudin bin Ahmad v Consolidated Hotels Ltd & Anor

HIGH COURT (SINGAPORE) – SUIT NO 3244 OF 1982
THEAN J
30 DECEMBER 1987

Tort – Negligence – Plaintiff injured by falling brick in construction site – Owner of site engaged supervisors and architects to supervise building works – Whether owner of site still retained possession and control of site – Whether negligence was attributable to main contractor – Whether owner of site vicariously liable to plaintiff for any negligent act of main contractor

The first defendant, the owner of a site on which a building was being constructed, engaged S Co as the main contractor in the construction of the building. The plaintiff was an employee of a scaffolding sub-contractor of S Co. While the plaintiff was working at the construction site, a brick fell from the upper floors and landed on his head, injuring him seriously. The plaintiff brought this action for damages for negligence against the first defendant as the owner and occupier of the construction site ('the premises'). The plaintiff submitted that as the first defendant engaged supervisors and architects to supervise the building works the first defendant did not cease to be in possession of the premises entirely and had retained sufficient control to make the first defendant the occupier of the premises.

Held, dismissing the claim:

(1) Possession of the site was at the material time vested in the main contractor and it had control of the site and the building then under construction. The architects were engaged by the first defendant as professional advisers in the construction of the building and they were independent contractors and not servants of the first defendant. There was no evidence that, apart from supervision to ensure the quality of workmanship and materials of the building, they exercised any control over the premises. In these circumstances, it can hardly be said that the first defendant, as the owner of the premises, had through the architects and the supervisors retained any measure of control over the premises in consequence of which it remained as an occupier thereof.

(2) The first defendant was merely the owner of the premises. If there was any negligence, such negligence was caused by or attributable to the main contractor or others on its behalf who caused the brick to fall on the plaintiff. The main contractor was an independent contractor and the first defendant cannot be vicariously liable to the plaintiff for any negligent act or omission of the main contractor.

[*Editorial Note*: The plaintiff has appealed to the Court of Appeal vide Civil Appeal No 3 of 1988.]

Cases referred to

1 *Wheat* v *E Lacon & Co Ltd* [1966] AC 552 (refd)
2 *Lembaga Kemajuan Tanah Persekutuan* v *Mariam & Ors* [1984] 1 MLJ 283 (distd)
3 *Honeywill & Stein Ltd* v *Larkin Brothers (London's Commercial Photographers) Ltd* [1934] 1 KB 191 (distd)
4 *Bunker* v *Charles Brand & Son Ltd* [1969] 2 QB 480 (distd)
5 *Ferguson* v *Welsh & Ors* [1987] 1 WLR 1553 (folld)

Subbiah Pillai for the plaintiff.
Ranvir Kumar Singh for the first defendant.

Cur Adv Vult

Thean J: The plaintiff was at the material time an employee of the second defendant, who was a scaffolding sub-contractor of SA Shee & Co Pte Ltd; the first defendant was the owner of a site, on which the building, now known as Peninsula Plaza, was being constructed, and SA Shee & Co Pte Ltd was engaged by the first defendant as the main contractor in the construction of the building. On 8 August 1979, while the plaintiff was working at the construction site, tying poles with rattan on the third floor of the partially completed building, a brick fell from the upper floors and landed on his head, and in consequence he sustained very serious injuries. He brought this action against the defendants for damages for negligence.

His claim against the second defendant was simple and straightforward. The second defendant was his employer and he claimed against him, the second defendant, for failing to provide a safe and proper system of work and exposing him to the risk of damage and injury. The second defendant entered an appearance, but did not defend the claim, and interlocutory judgment was entered against him with damages to be assessed. The solicitors then acting for the plaintiff applied for damages to be assessed and damages were assessed at $209,920; final judgment for this amount was entered against the second defendant. This judgment has not been satisfied and the second defendant's whereabouts are unknown.

The plaintiff now pursues his claim against the first defendant as the owner and the occupier of the construction site ('the premises'), and in his statement of claim he avers that the first defendant was negligent in the following respects: in failing to take reasonable care to see that